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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,617	12/20/2000	Noel Tenorio	020431.0750	6553
38441	7590	08/12/2005	EXAMINER	
LAW OFFICES OF JAMES E. WALTON, PLLC 1169 N. BURLESON BLVD. SUITE 107-328 BURLESON, TX 76028				HAMILTON, LALITA M
		ART UNIT		PAPER NUMBER
		3624		

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/750,617	TENORIO, NOEL
	Examiner Lalita M. Hamilton	Art Unit 3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 April 2005.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-70 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-70 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### Summary

On December 16, 2004, an Office Action was mailed to the Applicant rejecting claims 1-70. On April 22, 2005, the Applicant responded by amending claims 18, 20-21, 24-25, 28, 50-51, 53, 57-58, 61, 68, and 70.

#### ***Claim Rejections - 35 USC § 101***

The rejection set forth in the previous Office Action has been withdrawn.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 8-21, 25-37, 41-54, and 58-70 are rejected under 35 U.S.C. 102(e) as being anticipated by May (US 2002/0116317), as set forth in the previous Office Action.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5-7, 22-24, 38-40, and 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over May in view of Li (US 2003/0004850), as set forth in the previous Office Action.

#### ***Response to Arguments***

Applicant's arguments filed April 22, 2005 have been fully considered but they are not persuasive. The Applicant argues that May does not disclose a database operable to store profiles, where each profile specifies values for one or more parameters being negotiated; a matching server operable to compute a distance between values in an offer and values in the profile of the second party; or causing the offer to be accepted if the distance is acceptably small and modifying values of the offer if the distance is not acceptably small. In response, May discloses a database operable to store profiles, where each profile specifies values for one or more parameters being negotiated (user may enter profiles which are then stored when requesting an "Request for Price" quote; the RFP specifies the values of one or more parameters being negotiated—p.30, 374-377); a matching server operable to compute a distance between values in an offer and values in the profile of the second party (the system is

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capable of computing a distance between the values in an offer and values in the profile of a second party when conducting an RFP to determine the best match); and causing the offer to be accepted if the distance is acceptably small and modifying values of the offer if the distance is not acceptably small (RFP is accepted if it meets the requirements entered into the system or comes very close to meeting the requirements entered into the system; if the RFP is not acceptable—distance not acceptably small, then a response to the bid changing parameters—counteroffer—may be submitted). Therefore, the Examiner is interpreting May as reading onto the invention substantially as claimed.

The Applicant argues that Li does not teach the expression claimed in claim 5 and that the expressions taught by Li are not related to calculating distance between values in an offer from a first party and values in a profile of a second party. The Applicant further argues that there is no motivation to combine the May and Li references. In response, May is silent with regard to formulas that may be used to calculate distance in the auction system. Li teaches an auction management system in which various formulas are used to calculate constraints (Examiner is interpreting as being used to calculate a distance between values in an offer and values in the profile of a second party). The formulas taught by Li are not limited, and the system may be used to input any formula used to calculate constraints/distance. The Examiner has found motivation to combine in the fact that both May and Li disclose and suggest auction management systems in which parameters are used in negotiation; however, May is silent as to formulas that may be used in determining which offers to accept and reject.

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Therefore, the Examiner is interpreting May and Li as reading onto the invention substantially as claimed.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

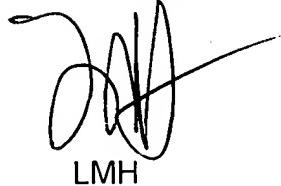
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M. Hamilton whose telephone number is (571) 272-6743. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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